IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3183 of 2001
with
CIVIL APPLICATION NO 590 of 2002
in
FIRST APPEAL No 3183 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GANGA W/O VITHHALBHAI MANCHANDDAS PATEL
Versus
STATE OF GUJARAT

Appearance:
1. First Appeal No. 3183 of 2001
MR AMIT C NANAVATI for Petitioner No. 1
MR DP JOSHI, LD. AGP for Respondent No. 1-2
MR YV SHAH for Respondent No. 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 05/09/2002

ORAL JUDGEMENT

1. The appellant - original claimant has filed this appeal against judgment and award dated 14th November, 2000, passed by the learned Extra Assistant Judge, Mahesana in Land Acquisition Reference Case No.3309/93. The learned Judge by his impugned judgment pleased to reject the reference filed by the claimant in this behalf.

2. The facts giving rise to this petition are as under:-

2.1 There are lands situated in the vicinity of Unjha Municipality, Tal. Siddhpur, Dist. Mahesana. As far as facts of the present case is concerned, the claimant is an owner of Survey No.482, Municipal Census No.4/120, and the said land is acquired by the Government for the public purpose namely widening of the road.

2.2 It may be noted that, as far as appellant is concerned, the Government decided to acquire 10 sq.mt. land out of Survey No.482, Municipal Census No.4/120 for the public purpose. For that purpose, the Government has published a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') on 15th April, 1982. Thereafter notification under Section 6 of the Act was published in Government Gazette on 12th April, 1985. After issuing necessary notices under the provisions of the Act, the Land Acquisition Officer by his award dated 10th December, 1986, awarded compensation to the claimant Rs.140/- per sq.mt., Rs.10,485/- for the super structure, 30% solatium and 5o% price in rise. Thus, in all Rs.16,229/- has been awarded to the claimant by the Land Acquisition Officer.

2.3 As the claimant aggrieved and dissatisfied with the said award, the claimant filed reference application before the District Court.

2.4 Before the Reference Court, the Government has also filed objection against the application of the claimant in this behalf. The Government stated that reference case is barred by law of limitation and the compensation which is offered and awarded to the claimant is quite just fair and other allegations in regard with the location size and super structure is quite just and fair which deserves no interference under the guise of additional compensation and reference case is required to be dismissed with costs.

2.5 Before the Reference Court, the claimant has examined Visuprasad Hiralal Patel, power of attorney

holder at Exh.16, and produced power of attorney at Exh.20. The previous judgment at Ex.19 and Ex.30/1. The said judgment was pertaining to Land Acquisition Reference Cases No.703/87 to 705/87 pertaining to Survey No.1186.

2.6 It may be noted that, Survey No.1186 is also situated on road, and in that case, the Land Acquisition Officer has awarded Rs.145/- per sq.mt. as compensation. The learned Extra Assistant Judge, Mahesana, by his judgment and award dated 10th April, 2000, awarded additional amount of Rs.205 per sq.mt. over and above the compensation already awarded by the Special Land Acquisition Officer namely Rs.350/- per sq.mt. by the Court. The Court also ordered to pay an additional amount of compensation at the rate of 12% on additional amount of compensation awarded to the claimant and 30% solatium under Sec.23(2) of the Act. The Court also awarded Rs.20,000/- for the damage caused to the existing construction and for reconstruction of the shop. The Court also ordered to pay interest on the additional compensation also at the rate of 9% p.a. from the date of taking possession or from the date of issuing notification under sec.4 of the Act whichever is earlier for the first year and thereafter at the rate of 15% p.a. till realisation of the payable amount according to the provisions of Sec.28 of the Act.

2.7 The claimant has also relied upon another judgment of the Court in Land Acquisition Reference No.344 of 1987 decided on 29th August, 1997. The said judgment pertains to Survey No.477. In that case also, the Land Acquisition Officer awarded Rs.125/- per sq.mt. and the Court has enhanced the compensation and directed to pay Rs.350/- per sq.mt. and also awarded Rs.20,000/for the damage caused to the existed construction and for reconstruction of the shop.

3. Learned counsel for the appellant has stated that the principle of giving compensation under the Act is contained in Sec.23 of the Act. Sec.23 reads as follows:

3.1 Learned advocate for the appellant further submitted that, when he has produced the award already passed in respect of vicinity of land, thus the award should be as comparable instances in the present case. He has also stated that the award given in this case has also been partly upheld by this Court in appeal and therefore the same is an additional circumstances in this behalf.

3.2 In support of the aforesaid submissions, learned advocate for the appellant has relied upon the Division Bench judgment of this Court in the case of Special Land Acquisition Officer vs. Punjabhai Narshibhai Patel reported in AIR 1991 Guj. 161 particularly para 13 which reads as under:

"Para.13 ... As noticed above, the Awards at Exs.10, 11 and 12 do provide comparable instances. The lands acquired under those cases were similar in nature to the lands acquired in the matters on hand. Moreover under two Awards the lands were acquired for the similar purpose, namely for the construction of the Southern side Approach Road to the new Narmada Bridge. We are conscious that in one case the lands were acquired for the purpose of construction of the GIDC Estate but it would not make much difference so far as the price of the similarly situated lands is concerned. In view of this position we feel that the Ld.Trial Judge was perfectly justified in placing reliance upon the above said three instances, namely the three Awards pronounced by the Competent Court while fixing the additional compensation payable to the claimants. Mr.Desai has been able to point out that the Award evidenced at Ex.12 which speaks of the market value of the land at the rate of Rs.325/- per Are was the subject matter of an appeal before this Court in First Appeal No.981 of 1978 and certain other cognate matters decided by this Court on 10.11.1989. In view of this position we had called for the judgment and the orders pronounced by this Court in First Appeal No.981 of 1978 and other cognate matters. We have been satisfied that the Award at Ex.12 was the subject matter before this Court in one of the above said appeals and that ultimately the above said finding of the competent Court fixing the market price of the land at the rate of Rs.325/per Are came to be upheld and confirmed by this Court. This is an additional circumstance which would go to show that the Ld. Trial Judge was perfectly justified in placing reliance upon the Awards at Exs.10, 11 and 12. Looking to this position it cannot be said that the Ld. Trial Judge has erred in fixing the market price of the acquired lands in the appeals on our hand."

3.3 He has also relied upon Division Bench judgment of this Court in the case of Deputy Collector vs. Mahant

of Vejanath Mahadev Ishwarbhai Guru Sombhanthi reported in 1998(1) G.L.H. (U.J.) 12, particularly para 6 which reads as under:

"Para.6 In the view of this fact situation, we see no reason to take the view different from the view expressed by the earlier Bench in the earlier decision, at least so far as the market value of the land is concerned. In any case, we have specifically put to the Ld.Counsel for the appellant as to whether he is able to point out any ground whether on facts or law, on the basis of which we may be persuaded to take a different view. In this context, the Ld.Counsel for the appellant states that he is not able to point out any such ground whatsoever."

4. Mr.D.P.Joshi, learned AGP appearing on behalf of respondents No.1 and 2 has tried to support the order of the learned trial Judge in this behalf. Mr.Y.V.Shah, learned advocate who is appearing on behalf of respondent No.3 has also tried to support the reasonings of the learned trial Judge in this behalf.

5. Learned advocate for the respondent No.3 Mr.Shah has produced the Map of the land in question. According to him, even the trial court has granted compensation qua Survey No.477 but the same should not be compared with Survey No.482 because Survey No.477 is a middle of the commercial locality whereas Survey No.482 is slightly away from the commercial locality and Survey No.477 is on the road and, therefore, there was some reduction regarding price of Survey No.482.

5.1 As regards Survey No.1186, he submitted that it is also slightly away from the commercial locality then Survey No.477 on the left hand side.

6. I have considered the rival submissions in this behalf. I have given my anxious consideration to all these aspects and also two Division Bench judgment of this Court which has been cited by the learned counsel for the appellant. In my view, if the land involved in the awards is slightly comparable land in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation of a later date. The award has to be treated as a valuation made by the State itself. It is in the nature of an evidence with regard to value of land involved in that case. The rates found in such award would be

dependable material to afford and guiding principle to work upon for determination of compensation.

7. In my view, in the matter of assessment, the compensation awarded on lands acquired for the same public purpose under the selfsame notification in respect of similar lands similarly situated is relevant. The same rate of compensation is to be awarded. Awards already passed in respect of lands acquired in the vicinity should be considered as comparable instances. These are the guiding principles for awarding compensation in this behalf. They are really comparable instances in this behalf as observed by this Court. However, I have also considered the aspect in this behalf.

8. In this case, the Land Acquisition Officer has already awarded Rs.140/- per sq.mt. whereas reference court has not awarded any amount in this behalf. In my view, when the reference court in other pieces of land of Survey Nos.477 and 1186 has awarded Rs.350/- per sq.mt., these are the comparable instances, and looking to the situation of the land which I have seen the Map, if some reduction is given on the price of Rs.350/- per sq.mt. which has been awarded in other case and in my view if Rs.290/- per sq.mt. awarded the same will be in the interest of justice and the claimant to that extent entitled more amount in this behalf.

9. As regards super structure, the Land Acquisition Officer has awarded Rs.10,485/-. However, the reference court did not award any amount in this behalf. In my view, the reference court has not considered this aspect because in other award also the trial court has awarded some amount for super structure and, therefore, the reference court has clearly erred in not awarding the super structure and, therefore, the claimant is entitled Rs.20,000/- as super structure. The claimant is also entitled to 30% solatium and 12% interest in this behalf.

10. I have considered the previous award in this behalf also and, therefore, the claimant is entitled Rs.20,000/- in this behalf. The claimant is also entitled to 30% solatium on the additional amount of Rs.150/- per sq.mt. which I have awarded in this behalf. The claimant is also entitled to 12% interest from 15.4.1982 the date on which the Government took possession of the land in question till realisation.

11. In view of the aforesaid observations and directions, this appeal is disposed of accordingly with

no order as to costs with following directions:

(1) In this case the Land Acquisition Officer has already awarded Rs.140/- per sq.mt. and by this judgment I have decided to award Rs.290/- per sq.mt. So the claimant is entitled to Rs.290 - Rs.140 = Rs.150/- per sq.mt. as additional amount in this behalf.

(2) As regards super structure, the Land Acquisition Officer has awarded Rs.10,485/whereas I determine price of the super structure Rs.20,000/-. So the claimant is entitled to Rs.20,000/- - Rs.10,485/- = Rs.9,515/-.

(3) The opponents are further ordered to pay an additional amount of compensation at the rate of 12% on additional amount of compensation awarded to the claimants according to the provisions of Sec.23(1-A) of the Land Acquisition Act.

(4) The opponents are further directed to pay the amount of solatium at the rate of 30% on the additional amount of compensation under Sec.23(2) of the Land Acquisition Act.

(5) The opponents are hereby ordered to pay interest on the additional compensation also at the rate of 9% per annum from the date of taking possession or from the date of issuing notification under Sec.4 of the Act whichever is earlier for the first year and thereafter at the rate of 15% per annum till realisation of the payable amount according to the provisions of Sec.28 of the Act.

(6) The amount received by the claimant is to be adjusted from the payable amount.

12. In view of the fact that I have already disposed of the main matter, the Civil Application No.590 of 2002 does not survive. In fact I have already considered the Map produced by Mr.Y.V.Shah. In view of the same, civil application does not survive. Hence civil application is also disposed of with no order as to costs.

(K.M. Mehta, J.)

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